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Calendar No. 689

99TH CONGRESS 2d Session | SENATE | REPORT 99-324

ORIGINAL

REAUTHORIZING THE TRIBALLY CONTROLLED COMMUNITY COLLEGE ASSISTANCE ACT OF 1978 AND THE NAVAJO COMMUNITY COLLEGE ACT

JUNE 18 (legislative day, JUNE 16), 1986.—Ordered to be printed

Mr. ANDREWS, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 2095]

The Select Committee on Indian Affairs to which was referred the bill (S. 2095) having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is an amendment in the nature of a substitute.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Tribally Controlled Community College Assistance Amendments of 1986".

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

(a) GRANT PROGRAMS.—Subsection (a) of section 110 of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1810(a)) is amended—

(1) by striking out "1985, 1986, and 1987" in paragraph (1) and inserting in lieu thereof "1987, 1988, 1989, and 1990", and

(2) by striking out "such fiscal years" in paragraphs (2) and (3) and inserting in lieu thereof "the fiscal years 1987, 1988, 1989, and 1990".

(b) ENDOWMENT PROGRAMS.—Section 306 of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1836) is amended by striking out "1985, 1986, and 1987" and inserting in lieu thereof "1987, 1988, 1989, and 1990".

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SEC. 3. DEFINITIONS.

(a) SATISFACTORY PROGRESS.—Subsection (a) of section 2 of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801(a)) is amended—

(1) by striking out "and" at the end of paragraph (6),

(2) by striking out the period at the end of paragraph (7) and inserting in lieu thereof "; and", and

(3) by adding at the end thereof the following new paragraph:

"(8) 'satisfactory progress toward a degree or certificate' has the meaning given to such term by the institution at which the student is enrolled.".

(b) INDIAN STUDENT COUNT.—Subsection (b) of section 2 of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801(b)) is amended—

(1) by striking out ", in accordance with the standards and practices of the appropriate accrediting agency or the institution at which the student is in attendance," in paragraph (5),

(2) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively, and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) Credits earned by any student who has not obtained a high school degree or its equivalent shall be counted toward the computation of the Indian student count if the institution at which the student is in attendance has established criteria for the admission of such student on the basis of the student's ability to benefit from the education or training offered. The institution shall be presumed to have established such criteria if the admission procedures for such studies include counseling or testing that measures the student's aptitude to successfully complete the course in which the student has enrolled. No credits earned by such student for purposes of obtaining a high school degree or its equivalent shall be counted toward the computation of the Indian student count.".

SEC. 4. OPERATION AND IMPROVEMENT GRANTS.

Paragraph (2) of section 108(a) of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1808(a)(2)) is amended to read as follows:

"(2) $5,820,".

SEC. 5. CONTRACTS UNDER INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.

Subsection (b) of section 129 of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1809(b)) is amended by adding at the end thereof the following new paragraph:

"(3) No tribally controlled community college for which a tribe has designated a portion of the funds appropriated for the tribe from funds appropriated under the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13) may be denied a contract for such portion under the Indian Self-Determina-

tion and Education Assistance Act (25 U.S.C. 450 et seq.) (except as provided in that Act), or denied appropriate contract support to administer such portion of the appropriated funds.".

SEC. 6. REPORT ON FACILITIES.

(a) IN GENERAL.—Section 112 of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1812) is amended—

(1) by striking out "Administrator of General Services" each place it appears and inserting in lieu therof "Secretary", and

(2) by striking out "enactment of this subsection" in subsection (a) and inserting in lieu thereof "enactment of the Tribally Controlled Community College Assistance Amendments of 1986".

(b) CONFORMING AMENDMENT.—Section 113(a) of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1813(a)) is amended by striking out "Administrator of General Services" and inserting in lieu thereof "Secretary".

SEC. 7. NAVAJO COMMUNITY COLLEGE.

Section 5 of the Navajo Community College Act (25 U.S.C. 640c-1) is amended—

(1) by striking out "the fiscal year beginning October 1, 1984, and for the three succeeding fiscal years" in subsection (a)(1) and inserting in lieu thereof "each of the fiscal years 1987, 1988, 1989, and 1990", and

(2) by striking out "for any fiscal year" in subsection (b)(1) and inserting in lieu thereof "for each fiscal year".

PURPOSE

The purpose of S. 2095 is to reauthorize the Tribally Controlled Community College Assistance Act of 1978, as amended, and the Navajo Community College Act, as amended, through fiscal year 1990.

BACKGROUND AND NEED

Congress first enacted legislation specifically authorizing a tribally controlled community college in 1971: the Navajo Community College Act (P.L. 92-189). In 1978, the legislation authorizing all tribes to establish community colleges was enacted: the Tribally Controlled Community College Assistance Act of 1978 (P.L. 95-471). Title I of P.L. 95-471 established programs for all tribal colleges and Title II of the Act addressed the Navajo Community College. P.L. 95-471 authorized appropriations through fiscal year 1982. The Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) extended the authorizations for the colleges through fiscal year 1984.

In 1983, Congress amended the Tribally Controlled Community College Assistance Act of 1978 by: establishing a new formula for counting students for funding; authorizing an endowment fund,

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grants for facility construction and forward funding; and extending the authorization through fiscal year 1987 (P.L. 98–192).

There are currently twenty-one tribally controlled community colleges ("TCCCs") in operation, serving over 4,000 students. These colleges are: Blackfeet Community College, Browning, MT; College of Ganado, Ganado, AZ; Cheyenne River Community College, Eagle Butte, SD; Deganadwidah-Quetzalcoatl University ("D–Q U"), Davis, CA; Dull Knife Memorial College, Lame Deer, MT; Fort Belknap Community College, Harlem, MT; Fort Berthold Community College, New Town, ND; Fort Peck Community College, Poplar, MT; Lac Courtes Oreilles Ojibwa Community College, Hayward, WI; Little Big Horn Community College, Crow Agency, MT; Little Hoop Community College, Devils Lake, ND; Lummi Community College, Bellingham, WA; Navajo Community College, Tsaile, AZ; Nebraska Indian College, Winnebago, NE; Oglala Lakota College, Kyle, SD; Salish Kosstenai Community College, Pablo, MT; Sinte Gleska College, Rosebud, SD; Sisseton-Wahpeton Community College, Sisseton, SD; Standing Rock Community College, Fort Yates, ND; Stone Child Community College, Rocky Boy, MT; and, Turtle Mountain Community College, Belcourt, ND.

Of these colleges, nine are fully accredited, six are candidates for accreditation, and six are in pre-candidacy status meeting all certification requirements of P.L. 95–471. The degree offered by these colleges are varied and include associate degrees in nursing, arts, applied science and, science; vocational certifications; and bachelor of science degrees. The colleges and their tribes have made great progress in the last three years toward self-sufficiency and in meeting the needs of the Indian communities. Since 1983, an additional three colleges have come into existence; five additional schools have attained accreditation; and, two schools now offer four year programs, as compared to one in 1983.

The 1983 amendments to the Tribally Controlled Community College Assistance Act of 1978, have yet to be implemented. The 1983 amendments provided for a new method of counting students to more accurately reflect the number of students in attendance in an academic year. To date, the BIA has not promulgated regulations to provide for the new Indian student count methodology and continues to rely, in its budget requests, on the pre-1983 full time equivalent student count which, by the Bureau's own admission, is approximately fifteen percent (15%) lower than the new Indian student count. The 1983 amendments also provided for a GSA study of facilities and authorized new construction if the study identified construction needs. The GSA has not conducted the study, due to be submitted to Congress in June, 1985, and has no plans to perform such a study.

An endowment program was established under Title III of the Act, in 1983, providing for a dollar-for-dollar match of Federal money with money raised by the colleges. The new Title III provided for the deposit of all monies and interest earned in a trust fund at a federally insured institution, and for recordkeeping and other safeguard procedures. The endowment funds are to be used for the operation and improvement of the colleges. To date, the BIA has not promulgated regulations implementing Title III and, therefore, has requested no monies for implementation of this new program.

In recognition of the need for stable funding levels and advance notice of the funding to be available in an academic year, two criteria closely reviewed by the accreditating agencies, the 1983 amendments also provided for forward funding for the colleges. Again, the BIA has not implemented this provision, a failure tied closely to the BIA's failure to establish procedures for the new Indian student count.

The Committee requests that the Bureau place top priority on the implementation of the 1983 amendments, and requests a report on the progress of implementing the new Indian student count, forward funding and the endowment program within three months of enactment of this Act.

Explanation and Summary of S. 2095

S. 2095 reauthorizes the Tribally Controlled Community College Assistance Act of 1978, as amended, and the Navajo Community College Act, as amended, through fiscal year 1990.

S. 2095 includes changes and clarification language to the Tribally Controlled Community College Assistance Act of 1978, as amended. A significant clarification deals with the issue of the student's satisfactory progress toward a degree or certificate for purposes of determining the Indian student count for funding under Title I of the Act.

The Tribally Controlled Community Colleges provide quality post-secondary education to Indian students by offering solid academic courses reflecting the needs and interests of the Indian communities. The tribal colleges work closely with the local communities to design curriculum and programs to meet the special needs of the tribal members.

In recognizing the special role that the tribal colleges play in the education of Indian people and in the development of the Indian communities, the Committee also recognizes that the colleges' curriculum and programs often differ from those offered at traditional community colleges. The students at tribal colleges also differ from those enrolled in traditional community colleges. Many of the tribal college students are older than the norm, have had little or no achievement at traditional colleges and are first-generation students. In addition, many students are also single parents, have low incomes and have had difficulties in high school, as evidenced by the high drop-out rate of the high schools.

The significant impact on the education of Indian people, which the colleges have made, and the growth in the tribal colleges, in terms of the number of colleges and students and the number of accredited colleges, in the past few years, is due to the colleges' identification of the special needs and uniqueness of their students. The Committee notes that each college works with its students on a one-to-one level when necessary, has set admission standards, which meet the requirements of the accreditating agencies, and has had a high success rate in graduating Indian students, many of whom continue their education at four-year colleges and in post-graduate programs. In addition to meeting the standards and requirements set by the accreditating agencies and by the Tribally Controlled Community College Assistance Act of 1978, as amended,

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the Colleges also review their programs and capabilities in terms of the needs of the student population.

The Bureau of Indian Affairs has questioned the "satisfactory progress" of students at tribal colleges, in terms of the computation of the Indian student count. The Committee notes that the Department of Education, the executive arm with substantial experience in higher education, after carefully reviewing the issue of whether or not to define "satisfactory progress" at institutions of higher learning, for purposes of the institutions' and/or students' eligibility for certain federal programs or assistance, determined that it was the institutions' right to set its own policies in this area. The Department of Education, in recognition of academic freedom, has included a provision in its regulations governing such federal programs or assistance allowing the institution to define a student's satisfactory progress. *See e.g.*, 34 C.F.R. 674.9(a)(5) (1985).

The Committee has amended the Tribally Controlled Community College Assistance Act of 1978, as amended, to clarify that each tribal college is academically free to define the "satisfactory progress" of its students in conformance with the Department of Education's policy.

The Committee is also aware of the Bureau's concern that students who have not obtained either a high school degree or its equivalent are attending tribal colleges. The colleges do allow some such students to enroll in certain educational or training courses, after first determining that the students will benefit from the class. The colleges also work closely with these students to ensure that they are capable of completing the course work.

Enrollment of non-high school degree students in community colleges is not unique to tribal colleges. Enrollment of such students in a college course is dependent on screening through testing and/or counseling to ensure that the student is qualified for the course. In addition, many community colleges offer courses of interest to members of the community, thereby adding to the student population older persons, community leaders and others desiring to pursue their training and/or education. The colleges should be congratulated on reaching out to the communities in such a way as to encourage active participation, through enrollment in specific courses, of these students.

The Committee has included bill language clarifying that credits earned by such students, with the exception of credits earned for the purposes of obtaining a high school degree or its equivalent, shall be counted in the computation of the Indian student count. The Committee also wishes to stress that credits earned by such students must be for college courses offered to all regularly enrolled college students, as outlined in the college's catalogue.

The Committee has also included bill language clarifying that tribal colleges receiving monies appropriated to their tribes under the Act of November 2, 1921 (42 Stat. 208, 25 U.S.C. 13, "Snyder Act") are eligible for contracts entered into with the Bureau of Indian Affairs pursuant to the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450, *et. seq.*, "P.L. 93-638"). In 1985, the Bureau took the position that tribal colleges were not eligible for P.L. 93-638 contracts and unilaterally changed to grants the on-going contracts with four colleges, Turtle Mountain

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Community College, Sinte-Gleska College, Oglala Lakota College and Dull Knife Community College. The Bureau's stated rationale was that the colleges activity was not within the scope of the Secretary's responsibility and, therefore, not within the scope of P.L. 93-638. The Committee requested a legal opinion on this issue, by letter of October 9, 1985, and is pleased that the Solicitor's Office has issued the following opinion:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, DC, March 31, 1986.

In reply, please address to: Main Interior, Room 6456.
BIA.IA.0625.

Memorandum to: Assistant Secretary—Indian Affairs.
From: Associate Solicitor, Indian Affairs.
Subject: Providing Snyder Act funds to Tribally Controlled Community Colleges.

This is in response to your request for advice on whether the Bureau of Indian Affairs may properly utilize contracts entered into under P.L. 93-638 to make payments of funds appropriated under the Snyder Act (25 U.S.C. § 13) to tribally controlled community colleges.

The question arises because of a September 3, 1985 memorandum from the Acting Deputy Assistant Secretary—Indian Affairs which directs that thereafter the funds be provided in the form of grants rather than by 638 contracts. Acting on the basis of the September 3 memorandum, Bureau field officials substituted grant agreements for existing contracts which had not expired. We understand the contractors have accepted the funds as grants rather than as contract funds under protest because they believe they are entitled to receive the funds pursuant to the provisions of their 638 contracts.

Apparently it was not foreseen that the September 3 memorandum would result, in effect, in contract terminations, for based on our consultation with interested Central Office officials no one disputes the right of the contractors to receive funds under the existing contracts. Such entitlement to receive the funds under the contracts includes the right to receive contract support funds where justification under the contracts exists for the payment of support funds.

If requested, we shall be glad to provide advice on what needs to be done in the future in order to furnish Snyder Act funds to tribally controlled community colleges on the basis of grants rather than through 638 contracts.

TIM VOLLMANN.

The Committee trusts that the clarifying bill language will put an end to this issue once and for all. The question of tribal colleges' eligibility for P.L. 93-638 contracts has been in issue for the past few years. However, the Committee notes that a historical analysis of the colleges' funding should have answered the question in the affirmative. Prior to enactment of the Tribally Controlled Community College Assistance Act of 1978, the BIA funded several tribal

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colleges through the P.L. 93-638 contracting process. In 1977 and 1978, the BIA opposed enactment of specific authorization of tribal colleges by stressing that the Bureau already had the authority to fund such programs, under P.L. 93-638, and was, in fact, funding a number of tribal colleges. In 1979, after the enactment of the Tribally Controlled Community College Assistance Act of 1978, the Bureau attempted to deny P.L. 93-638 funding, but under pressure from Congress, abandoned its position and contracted with the colleges. Then again in 1980 and 1981, the BIA acknowledged that a college could receive both P.L. 95-471 and P.L. 93-638 monies, but took the position that amounts to be received under P.L. 95-471 would have to be reduced by the amount received under P.L. 93-638. Again, the BIA abandoned its position, but not before tribal colleges lost money. In 1983, the Tribal Colleges Act was amended to prevent this situation from recurring.

The current amendment will guarantee that when a tribe determines, pursuant to Bureau regulations and procedures, that it wishes a portion of its available funding, appropriated under the Snyder Act, to be available for use by the tribal college, the college will be eligible for a P.L. 93-638 contract and contract support funds. No contract should be rejected on the basis of receipt of or eligibility for P.L. 95-471 funding or the fact that the potential contractor is engaged in or would be engaged in providing higher education services. The Committee does not view this amendment as a change in current law or practices. Instead, the Committee views this language as clarifying the current laws and leaving only one possible interpretation of law available to the Bureau: that a tribal college receiving Snyder Act monies is eligible for a P.L. 93-638 contract and contract support funds.

The Committee has included bill language amending the current requirement that the Government Services Administration conduct a study on facilities available to the colleges and report the results to Congress, a report that was due in June, 1985. The GSA has not conducted the study and has no plans to do so, barring specific funding for such study. The Bureau has testified that it will be looking at the available facilities to determine the need for new construction and for the repair and renovation of existing BIA facilities for use by the colleges. New bill language requires the Secretary of Interior to conduct the study on facilities and to report on his findings within eighteen months after the date of enactment of this Act. The Secretary is also responsible for initiation of a program to repair, alter, renovate and/or reconstruct identified facilities. The bill language removes the Administrator of General Services from responsibility under the Tribally Controlled Community College Assistance Act of 1978, as amended, and places the responsibility for Section 112 in the Secretary of the Interior.

The Committee notes that the Bureau of Indian Affairs has raised the issue of the eligibility of tribal college students for general assistance payments. The Bureau has, with the exception of a pilot project at three TCCCs, denied general assistance to students attending tribal colleges. The Committee knows of no legal basis for the denial of general assistance payments to TCCC students, and in fact, disagrees with the Bureau's policy. The payment of general assistance to a student attending tribal college appears to

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be more rational than denial of such payments. Many of these students are unemployed due to the lack of marketable job skills in an area where there are few jobs and those available often require at least an associate degree. The tribal colleges offer students the opportunity to obtain the education and skills to become employed and self-sufficient at a reasonable cost. As mentioned above, many college students are single-parents and of low income. The colleges offer these students a way out of the vicious cycle of unemployment and general assistance.

The Committee believes that allowing tribal college students to receive general assistance payments for the short time they are enrolled in college would not make a major financial impact on the general assistance program. The Committee is aware that the Bureau is completing a study, utilizing pilot projects at three of the tribal colleges, to determine the impact of allowing students to be eligible for general assistance. The Committee requests that the Bureau furnish a copy of this study, upon its completion, to the appropriate authorizing committees of Congress. Further, the Committee requests that the Bureau review its policy of not allowing students to participate in the general assistance program, in light of the above.

Section-by-Section Analysis

Section 1 contains the short title of the Act.

Section 2 reauthorizes the grant program and endowment program through fiscal year 1990.

Section 3(a) amends the current law by adding a definition of a student's "satisfactory progress", which allows the institution to define the term.

Section 3(b) requires that credits earned by non-high school degree students be counted in the computation of the Indian student count, if the institution, at which the student is in attendance, has established criteria for the admission of such student on the basis of his ability to benefit from the education or training offered, and prohibits the counting in the computation of the Indian student count any credits earned by such student for the purposes of obtaining a high school degree or it equivalent.

Section 4 authorizes the payment of grants to Title I colleges of $5,820.00 per Indian student count.

Section 5 allows colleges receiving funds under the Act of November 2, 1921 ("Snyder Act") to negotiate contracts, including contract support funding, pursuant to the Indian Self-Determination and Education Assistance Act.

Section 6 requires the Secretary to conduct a study of facilities available for use by the colleges and to submit a report on the results of this study within 18 months after the enactment of this Act. Section 6 also provides for the Secretary to initiate a program to conduct necessary renovations, alterations, repairs and reconstruction of facilities identified in the study.

Section 7 reauthorizes the Navajo Community College Act through fiscal year 1990.

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LEGISLATIVE HISTORY

S. 2095 was introduced on February 25 (legislative day, February 4), 1986 by Senator Andrews, for himself, and Senators Melcher, Abdnor, Baucus, Goldwater, DeConcini, Pressler, Burdick, Simon, Inouye, and Bingaman. The bill was referred to the Select Committee on Indian Affairs, which held a hearing in Washington, D.C. on March 20, 1986.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on May 14, 1986, by vote of a quorum present, recommends that the Senate pass S. 2095, as amended.

COST AND BUDGETARY CONSIDERATION

The cost estimate for S. 2095, as provided by the Congressional Budget Office, are outlined below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 30, 1986.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate of S. 2095, the Tribally Controlled Community College Assistance Amendments of 1986, as ordered reported from the Senate Select Committee on Indian Affairs on May 14, 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2095.
2. Bill title: Tribally Controlled Community College Assistance Amendments of 1986.
3. Bill status: As ordered reported by the Senate Select Committee on Indian Affairs, May 14, 1986.
4. Bill purpose: The purpose of this bill is to amend and extend the authorization for appropriations for assistance to tribally controlled community colleges.
5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Tribally Controlled Community College Assistance Act:					
Authorization levels:					
Technical assistance contracts	0.0	3.2	3.2	3.2	.....
Grants to colleges	0.0	30.0	30.0	30.0	.....

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[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Construction grants [1]					
Endowment program	0.0	5.0	5.0	5.0	
Navajo Community College Act: Construction grants [1]					
Bill total:					
Authorization level	0.0	38.2	38.2	38.2	
Estimated outlays	0.0	16.8	34.0	38.2	21.4

[1] Funding levels for construction grants are to be based on the result of a Bureau of Indian Affairs study of facilities yet to be undertaken and therefore are not included in this estimate.

The costs of this bill fall within Function 500.

Basis of estimate: S. 2095 extends the authorization for grants to tribally controlled community colleges through 1990. The grants are currently authorized through 1987. The authorization levels are those specifically stated in the bill. Grants for the operation of the Navajo Community College are permanently authorized.

Outlay estimates were made assuming full appropriation of authorized levels, and reflect the current spending pattern of these programs.

6. Estimated cost to state and local governments: The Congressional Budget Office has determined that the budgets of State and local governments would not be affected by the enactment of this bill.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Ken Pott.

10. Estimate approved by: Janice Peskin (for James L. Blum, Assistant Director for Budget Analysis).

Regulatory Impact Statement

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2095, as amended, will have a minimal impact on regulatory or paperwork requirements.

Executive Communications

The only Executive communication received by the Committee was in the form of testimony offered at the March 20, 1986, hearing by Henrietta Whiteman, Deputy Assistant Secretary for Education, Bureau of Indian Affairs, Department of the Interior. The statement follows:

STATEMENT OF DR. HENRIETTA WHITEMAN, DIRECTOR OF THE OFFICE OF INDIAN EDUCATION PROGRAMS, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Good day, Mr. Chairman and Members of the Committee. I am pleased to be here today to discuss with you S. 2095, a bill "To reauthorize the Tribally Controlled Community College Assistance Act and the Navajo Community College Act."

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We support enactment of S. 2095 which reauthorizes Titles I and III of the Tribally Controlled Community College Assistance Act (P.L. 95-471) and the Navajo Community College Act for 3 years.

The policy of the Department of the Interior is to support and encourage the establishment, operation, and improvement of tribally controlled community colleges to insure continued and expanded opportunities for Indian students. Since the implementation of P.L. 95-471 in 1979, 14 of the 19 tribal colleges currently funded under the law have become accredited or candidates for accreditation. In FY 1985, 437 students graduated from these institutions with an additional 75 graduating from Navajo Community College which is funded under a separate act. A list of the colleges and pertinent data is attached to my prepared statement.

The minimum requirement for funding of the Tribally Controlled Community Colleges under the Tribally Controlled Community College Assistance Act is a positive eligibility determination. The process begins with the tribe submitting an application to the Office of Indian Education Programs. An on-site visit is made to conduct the eligibility study. A feasibility study model is used as the standard instrument in making a determination for eligibility. The model requires evidence: (1) that organic documents and legal requirements outlined in the Act are met; (2) of harmony between the needs outlined by the tribe and the goals, philosophy and plan of operation of the college; (3) that the curriculum is in harmony with the goals and objectives of the tribe; (4) that the institution has a system for identifying full-time and part-time students in attendance; (5) of the absence of alternative education sources; (6) of the presence of a reasonable number of students; (7) of the existence of sufficient facilities to meet the needs of the student body; (8) that the existing staff is adequately providing the services offered by the college; and (9) that the college has adequate funding to support its proposed program and that available resources are managed in an efficient and accountable manner.

The Director, Office of Indian Education Programs, has the final responsibility for determining whether the college is feasible, that is whether there is justification to encourage and maintain the Tribally Controlled Community College. The Assistant Secretary for Indian Affairs has the final determination in the event of a negative finding. Technical assistance is provided to assist the tribal colleges in gaining full accreditation and maintaining quality cost effective program operations.

The Navajo Community College Act authorize funding for that college on a needs basis rather than a student count. We are currently working with the college to draft regulations to provide a more systematic way of determining appropriate funding levels for Navajo Community College.

We support our tribal colleges and are pleased with the progress they have made in their development since the inception of P.L. 95-471. We are pleased to support this reauthorization bill.

This completes my prepared statement. I will be happy to answer any questions you may have.

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TABLE 2—FTE AND GRADUATES

[By fiscal year]

Tribal college	FTE [1]				Graduates				Degrees or certificate offered [4]
	1983	1984	1985	1986 [2]	1983	1984	1985	Accreditation [3]	
Blackfeet	176	179	174	210	84	22	56	Cand	AA, AAS, Voc. Cert.
Cheyenne River	73	52	45	47	10	7	7	NA	AA, AS, Voc. Cert.
College of Ganado	130	157	182	126	9	17	15	Accred	AA, AAS.
D–Q University	100	107	112	107	12	11	7	Accred	AA, AS.
Dull Knife	146	190	178	87	20	15	18	Cand	AA, AAS.
Fort Belknap [5]			76	65				NA	AA.
Fort Berthold	41	63	61	99	16	11	15	Cand	AA, Voc. Cert.
Fort Peck	50	57	59	104	14	15	10	Cand	AA, AAS, Voc. Cert.
Lac Courtes Oreilles Ojibwa		57	66	97		4		NA	AA.
Little Big Horn	81	95	80	84	5	35	25	Cand	AA, Voc. Cert.
Little Hoop	39	57	66	68	12	7	10	NA	AAS, Voc. Cert.
Lummi	26	77	104	140	20	1	10	NA	AS.
Nebraska	162	149	146	138	21	22	23	Cand	AA, AS, AAS, Voc. Cert.
Oglala Sioux	371	421	480	454	53	71	70	Accred	AA, BS, Voc. Cert.
Salish Kootenai	190	182	179	224	42	28	40	Accred	AA, AAS, Voc. Cert.
Sinte Gleska	194	252	269	305	24	15	30	Accred	AS, AAS, BS, Voc. Cert.
Sisseton-Wahpeton	71	116	126	93	38	15	10	Cand	AA, Voc. Cert.
Standing Rock	172	214	225	205	24	32	30	Accred	AA, AAS, AS, Voc. Cert.
Turtle Mountain	172	191	225	259	53	40	61	Accred	AA, AAS.
Title I totals:	2,194	2,616	2,853	2,912	457	368	437		

[1] To convert these FTE figures to ISC's, increase each number by 15%.
[2] FTE for FY 1966 represent student count for the fall 1985 semester. These numbers will be averaged with the spring 1986 semester (and winter quarter where appropriate) for the final fund distribution.
[3] Accred—Fully accredited by a recognized accreditation association.
Cand—Candidate status towards accreditation.
NA—Not accredited but meets the three institutional certification requirements of Public Law 95–471.
[4] Degrees Awarded by TCCC.
ASN—Associate of Science Nursing (R.N. and L.P.N.—at NCC 80% of the students must pass State examinations in order for the program to maintain accreditation).
AA—Associate of Arts.
AS—Associate of Science.
AAS—Associate of Applied Science.
BS—Bachelor of Science.
Voc. Cert.—Vocational Certificate, at least one year but not more than two years in a vocational program. (Students must pass a proficiency examination in vocational programs).
[5] First funded in FY 1985.

TABLE 3.—FTE CONVERSION TABLE TITLE I

	Fiscal year—			
	1985 actual	1986 enacted to date	1987 base	1987 estimate
Prior method of counting=FTE	2,853	2,912	2,912	2,742
New method of counting=ISC [1]	3,281	3,349	3,349	3,158
Funds available	$6,950,000	$7,406,000	$7,406,000	$6,974,000
Value per FTE	$2,436	$2,543	$2,543	$2,543
Value per ISC	$2,118	$2,211	$2,211	$2,211

[1] The new method of calculation results in a count approximately 15% higher than the old method.

Changes in Existing Law

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes the following changes in existing law (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no changes is proposed is shown in roman):

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TRIBALLY CONTROLLED COMMUNITY COLLEGE ASSISTANCE ACT OF 1978

* * * * * * *

DEFINITIONS

SEC. 2. (a) For purposes of this Act, the term—

(2) "Indian tribe" means any Indian tribe, band, nation, or other organized group of community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(3) "Secretary", unless otherwise designated, means the Secretary of the Interior;

(4) "tribally controlled community college" means an institution of higher education which is formally controlled, or has been formally sanctioned, or chartered, by the governing body of an Indian tribe or tribes, except that no more than one such institution shall be recognized with respect to any such tribe;

(5) "institution of higher education" means an institution of higher education as defined by section 1201(a) of the Higher Education Act of 1965, except that clause (2) of such section shall not be applicable and the reference to Secretary in clause (5)(A) of such section shall be deemed to refer to the Secretary of the Interior;

(6) "national Indian organization" means an organization which the Secretary finds is nationally based, represents a substantial Indian constituency, and has expertise in the field of Indian education; [and]

(7) "Indian student count" means a number equal to the total number of Indian students enrolled in each tribally controlled community college, determined in a manner consistent with subsection (b) of this section on the basis of the quotient of the sum of the credit hours of all Indian students so enrolled, divided by twelve[;] *; and*

(8) "satisfactory progress toward a degree or certificate" has the meaning given to such term by the institution at which the student is enrolled.

(1) "Indian" means a person who is a member of an Indian tribe;

(b) The following conditions shall apply for the purpose of determining the Indian student count pursuant to paragraph (7) of subsection (a):

(1) Such number shall be calculated on the basis of the registrations of Indian students as in effect at the conclusion of the third week of each academic term.

(2) Credits earned in classes offered during a summer term shall be counted toward the computation of the Indian student count in the succeeding fall term.

(3) Credits earned by any student who has not obtained a high school degree or its equivalent shall be counted toward the computation of the Indian student count if the institution at

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which the student is in attendance has established criteria for the admission of such student on the basis of the student's ability to benefit from the education or training offered. The institution shall be presumed to have established such criteria if the admission procedures for such studies include counseling or testing that measures the student's aptitude to successfully complete the course in which the student has enrolled. No credits earned by such student for purposes of obtaining a high school degree or its equivalent shall be counted toward the computation of the Indian student count.

[(3)] *(4)* Indian students earning credits in any continuing education program of a tribally controlled community college shall be included in determining the sum of all credit hours.

[(4)] *(5)* Credits earned in a continuing education program shall be converted to a credit-hour basis in accordance with the tribally controlled community college's system for providing credit for participation in such program.

[(5)] *(6)* No credit hours earned by an Indian student who is not making satisfactory progress toward a degree or certificate [in accordance with the standards and practices of the appropriate accrediting agency or the institution at which the student is in attendance,] shall be taken into account.

TITLE I—TRIBALLY CONTROLLED COMMUNITY COLLEGES

* * * * * * *

AMOUNT OF GRANTS

SEC. 108. (a) Except as provided in section 111, the Secretary shall, subject to appropriations, grant for each academic year to each tribally controlled community college having an application approved by him an amount equal to the product of—

(1) the Indian student count at such college during such academic year, as determined by the Secretary in accordance with section 2(a)(7) of this Act; and

(2)[(A) $4,000 for fiscal year 1984,

[(B) $5,025 for fiscal year 1985,

[(C) $5,415 for fiscal year 1986, and

[(D) $5,820 for fiscal year 1987,] *$5,820,*

except that no grant shall exceed the total cost of the education program provided by such college.

(b) The Secretary shall make payments, pursuant to grants under this title, in advance installments of not less than 40 centum of the funds available for allotments, based on anticipated or actual numbers of full-time equivalent Indian students or such other factors as determined by the Secretary. Adjustments for overpayments and underpayments shall be applied to the remainder of such funds and such remainder shall be delivered no later than July 1 of each year.

(c)(1) Each institution receiving payments under this title shall annually provide to the Secretary an accurate and detailed accounting of its operating and maintenance expenses and such other information concerning costs as the Secretary may request.

(2) The Secretary shall, in consultation with the National Center for Education Statistics, establish a data collection system for the purpose of obtaining accurate information with respect to the needs and costs of operation and maintenance of tribally controlled community colleges.

EFFECT ON OTHER PROGRAMS

SEC. 109. (a) Except as specifically provided in this title, eligibility for assistance under this title shall not, by itself, preclude the eligibility of any tribally controlled college to receive Federal financial assistance under any program authorized under the Higher Education Act of 1965 or any other applicable program for the benefit of institutions of higher education, community colleges, or postsecondary educational institutions.

(b)(1) The amount of any grant for which tribally controlled community colleges are eligible under section 108 shall not be altered because of funds allocated to any such colleges from funds appropriated under the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

(2) No tribally controlled community college shall be denied funds appropriated under such Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

(3) No tribally controlled community college for which a tribe has designated a portion of the funds appropriated for the tribe from funds appropriated under the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13) may be denied a contract for such portion under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) (except as provided in that Act), or denied appropriate contract support to administer such portion of the appropriated funds.

(c) For the purposes of sections 312(2)(A)(i) and 322(a)(2)(A)(i) of the Higher Education Act of 1965, any Indian student who receives a student assistance grant from the Bureau of Indian Affairs for postsecondary education shall be deemed to have received such assistance under subpart 1 of Part A of title IV of such Act.

APPROPRIATION AUTHORIZATION

SEC. 110. (a)(1) There is authorized to be appropriated, for the purpose of carrying out section 105, $3,200,000 for each of the fiscal years [1985, 1986, and 1987] *1987, 1988, 1989, and 1990.*

(2 There is authorized to be apropriated for the purpose of carrying out section 107, $30,000,000 for each of [such fiscal years] *the fiscal years 1987, 1988, 1989, and 1990.*

(3) There are authorized to be appropriated such sums as may be necessary for the purpose of carrying out sections 112(b) and 113 for each of [such fiscal years] *the fiscal years 1987, 1988, 1989, and 1990.*

(b)(1) For the purpose of affording adequate notice of funding available under this Act, amounts appropriated in an appropriation Act for any fiscal year to carry out this Act shall become available for obligation on July 1 of that fiscal year and shall remain available until September 30 of the succeeding fiscal year.

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(2) In order to effect a transition to the forward funding method of timing appropriation action described in paragraph (1), there are authorized to be appropriated, in an appropriation Act or Acts for the same fiscal year, two separate appropriations to carry out this Act, the first of which shall not be subject to paragraph (1).

* * * * * * *

REPORT ON FACILITIES

SEC. 112. (a) The [Administrator of General Services] *Secretary* shall provide for the conduct of a study of facilities available for use by tribally controlled community colleges. Such study shall consider the condition of currently existing Bureau of Indian Affairs facilities which are vacant or underutilized and shall consider available alternatives for renovation, alteration, repair, and reconstruction of such facilities (including renovation, alteration, repair, and reconstruction necessary to bring such facilities into compliance with local building codes). Such study shall also identify the need for new construction. A report on the results of such study shall be submitted to the Congress not later than eighteen months after the date of [enactment of this subsection] *enactment of the Tribally Controlled Community College Assistance Amendments of 1986*. Such report shall also include an identification of property—

(1) on which structurally sound buildings suitable for use as educational facilities are located, and

(2) which is available for use by tribally controlled community colleges under section 202(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(a)(2)) and under the Act of August 6, 1956 (70 Stat. 1057; 25 U.S.C. 443a).

(b) The [Administrator of General Services] *Secretary*, in consultation with the Bureau of Indian Affairs, shall initiate a program to conduct necessary renovations, alterations, repairs, and reconstruction identified pursuant to subsection (a) of this section.

(c) For the purposes of this section, the term "reconstruction" has the meaning provided in the first sentence of subparagraph (B) of section 742(2) of the Higher Education Act of 1965 (20 U.S.C. 1132e-1(2)(B)).

CONSTRUCTION OF NEW FACILITIES

SEC. 113. (a) With respect to any tribally controlled community college for which the report of the [Administrator of General Services] *Secretary* under section 112(a) of this Act identifies a need for new construction, the Secretary shall, subject to appropriations and on the basis of an application submitted in accordance with such requirements as the Secretary may prescribe by regulation, provide grants for such construction in accordance with this section.

(b) In order to be eligible for a grant under this section, a tribally controlled community college—

(1) must be a current recipient of grants under section 105 or 107, and

(2) must be accredited by a nationally recognized accrediting agency listed by the Secretary of Education pursuant to the last sentence of section 1201(a) of the Higher Education Act of

1965 (20 U.S.C. 1141(a)), except that such requirement may be waived if the Secretary determines that there is a reasonable expectation that such college will be fully accredited within eighteen months. In any case where such a waiver is granted, grants under this section shall be available only for planning and development of proposals for construction.

(c)(1) Except as provided in paragraph (2), grants for construction under this section shall not exceed 80 per centum of the cost of such construction, except that no tribally controlled community college shall be required to expend more than $400,000 in fulfillment of the remaining 20 per centum. For the purpose of providing its required portion of the cost of such construction, a tribally controlled community college may use funds provided under the Act of November 2, 1921 (25 U.S.C. 13), popularly referred to as the Snyder Act.

(2) The Secretary may waive, in whole or in part, the requirements of paragraph (1) in the case of any tribally controlled community college which demonstrates that neither such college nor the tribal government with which it is affiliated have sufficient resources to comply with such requirements. The Secretary shall base a decision on whether to grant such a waiver solely on the basis of the following factors: (A) tribal population; (B) potential student population; (C) the rate of unemployment among tribal members; (D) tribal financial resources; and (E) other factors alleged by the college to have a bearing on the availability of resources for compliance with the requirements of paragraph (1) and which may include the educational attainment of tribal members.

(d) If, within twenty years after completion of construction of a facility which has been constructed in whole or in part with a grant made available under this section—

(1) the facility ceases to be used by the applicant in a public or nonprofit capacity as an academic facility, unless the Secretary determines that there is good cause for releasing the institution from this obligation, and

(2) the tribe with which the applicant is affiliated fails to use the facility for a public purpose approved by the tribal government in furtherance of the general welfare of the community served by the tribal government.

title to the facility shall vest in the United States and the applicant (or such tribe if such tribe is the successor in title to the facility) shall be entitled to recover from the United States an amount which bears the same ratio to the present value of the facility as the amount of the applicant's contribution (excluding any funds provided under the Act of November 2, 1921 (25 U.S.C. 13)) bore to the original cost of the facility. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is located.

(e) No construction assisted with funds under this section shall be used for religious worship or a sectarian activity or for a school or department of divinity.

(f) For the purposes of this section—

(1) the term "construction" includes reconstruction or renovation (as such terms are defined in the first sentence of sub-

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paragraph (B) of section 742(2) of the Higher Education Act of 1965 (20 U.S.C. 1132e–1(2)(B))); and

(2) the term "academic facilities" has the meaning provided such term under section 742(1) of the Higher Education Act of 1965 (20 U.S.C. 1132e–1(1)).

* * * * * * *

AUTHORIZATION OF APPROPRIATIONS

SEC. 306. (a) There is authorized to be appropriated to carry out the provisions of this title $5,000,000 for each of the fiscal years [1985, 1986, and 1987] *1987, 1988, 1989, and 1990.*

(b) Any funds appropriated pursuant to subsection (a) are authorized to remain available until expended.

NAVAJO COMMUNITY COLLEGE ACT

* * * * * * *

AUTHORIZATION OF APPROPRIATIONS

SEC. 5. (a)(1) For the purpose of making construction grants under this Act, there are hereby authorized to be appropriated such sums as may be necessary for [the fiscal year beginning October 1, 1984, and for the three succeeding fiscal years] *each of the fiscal years 1987, 1988, 1989, and 1990.*

(2) Sums appropriated pursuant to this subsection for construction shall, unless otherwise provided in appropriations Acts, remain available until expended.

(b)(1) There is further authorized to be appropriated for grants to the Navajo community college [for any fiscal year] *for each fiscal year* beginning on or after October 1, 1979, an amount equal to the amount necessary for operation and maintenance of the college, including, but not limited to, administrative, academic, and operations and maintenance costs.

(2) No grant under this subsection shall exceed—

(A) $4,000 for each such full-time equivalent Indian student in actual attendance at such college; or

(B) the total annual cost of the education program provided by such college,

whichever is less.

(3) The Secretary shall make payments, pursuant to grants under this subsection, in advance installments of not less than 40 per centum of the funds available for allotment, based on anticipated or actual numbers of full-time equivalent Indian students or such other factors as determined by the Secretary. Adjustments for overpayments and underpayments shall be applied to the remainder of such funds and such remainder shall be delivered no later than July 1 of each year.

(c) The Secretary of the Interior is authorized and directed to establish by rule procedures to insure that all funds appropriated under this Act are properly identified for grants to the Navajo

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Community College and that such funds are not commingled with appropriations historically expended by the Bureau of Indian Affairs for programs and projects normally provided on the Navajo Reservation for Navajo beneficiaries.

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